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Review

The teaching of legal medicine in Australasia

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Abstract

The interface of medicine and law highlights the difference between doctors and lawyers. It is the doctor's role to determine his or her adversary (diagnosing an illness) and to decide the optimal means for overcoming same, such that the doctor assumes the role which is analogous to not only the lawyer but also the judge and jury when dealing with illness and it is the doctor who prescribes the appropriate remedy. Conversely, the lawyer only represents the objectives of his/her client, thereby only representing a single focus within the complexity of the problem. It is the duty of the system to reach the proper conclusion and prescribe the appropriate remedy. It follows that doctors and lawyers operate under a different set of standard operating procedures and expectations. This paper describes the evolution of the Australian College of Legal Medicine (ACLM) and its contribution to the teaching of legal medicine in Australasia.

The ACLM was formed in 1995 and in its first decade of existence has established a range of programs, including the expert witness program, basic law intensive, the advanced law intensive, annual scientific meetings and further educative programs in forensic medicine.

The Australian & New Zealand Forensic Medicine Society has been incorporated into the ACLM and the College has formed a partnership with Griffith University to provide the first Master of Legal Medicine course provided from within a School of Medicine, at university level, rather than offering health law from within a legal program. The College has been approached by other medical colleges within Australia to offer training for their Fellows and organised its first offshore training program in 2006.

Keywords: Legal medicine; Remedy; Duty of care; ACLM; Australasia; Expert witness program; Teaching; Basic law intensive; Australian College of Legal Medicine; Law

1. Introduction

''Legal medicine'' embraces the interface between medicine and law. It recognises the different approaches of the lawyer and the doctor to problems of mutual concern. It must be accepted that there are different parameters and expectations which influence the thinking and problem-solving processes adopted by the doctor and the legal practitioner.[1] The study of law is usually perceived as being under the rubric of 'the humanities', while that of medicine is perceived as a scientific discipline.[2]

In medicine, the doctor assesses the patient's symptoms and signs and uses this information to determine the appropriate diagnosis. This may require the proposition of a provisional diagnosis (the diagnosis of best fit) and a set of differential diagnoses (the possible diagnoses that might apply should the provisional diagnosis prove incorrect).[3] Within medicine one comes across terms such as ''management'' and ''treatment''. Management requires the definition of such an appropriate diagnosis for which treatment can be prescribed to offer the desired remedy.[4] '' Remedy'' is a word which is common to both medicine and law although its meaning is quite different within the two disciplines.[5]

Australia and some of its neighbours, such as New Zealand, function within a common law legal system which is based upon the adversarial environment in which the lawyers, representing their clients, argue alternative interpretations of the same facts. Either a judge or jury decides the relative merits of the arguments.[6] Within this context, it is the legal system which must uncover the truth and, based

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on its findings, determine the appropriate remedy to right whatever wrong it decides has occurred.[6]

These examples demonstrate the quite different approaches of the doctor and lawyer to the responsibility of 'duty of care' for either the patient or the client. Within medicine, the concept of 'remedy' represents the approach to be adopted to fight disease. The remedy is the treatment that must be used to overcome whatever illness afflicts the patient.[7]

The doctor's prime objective is to manage an illness which, as stated earlier, requires an appropriate diagnosis and an understanding of its pathophysiology to allow the doctor to select the best 'remedy' for that illness. This approach ultimately demands a single interpretation of the diagnosis and generally assumes that the provisional diagnosis is correct, failing which the treatment appropriate to the differential diagnoses may need to be entertained.[3] It follows that, within the discipline of medicine, the doctor's adversary is the illness rather than another person, or the system within which the doctor operates. It is the doctor's role to determine his/her adversary (diagnosing the illness) and to decide the optimal means for overcoming the same. This translates into doctor assuming roles analogous to those of the lawyer, judge and jury when dealing with an illness and prescribing the appropriate remedy.

The doctor, practising medicine, discharges multiple duties when the process is analysed from the legal perspective. The doctor must do the patient no harm and is expected to provide the best of care, within his/her competence.[8] Thus the doctor holds responsibility for the whole system and its delivery to the individual patient. The lawyer is responsible, within the common-law system, to represent, and to be an advocate for, only one side of any given situation. The opposing views are presented to an external [juridical] body, to determine the appropriate outcome. While it is the doctor's duty to provide the right treatment for the right diagnosis, it is not the duty of the lawyer to determine right from wrong but rather to represent the case which is proffered by his/her client. It is the duty of the system to prescribe the remedy.

The legal system often moves very slowly, with significant delays which are incurred as a consequence of the parties debating the appropriate procedures to be adopted for the handling of a legal matter. There is provision for appeal, and counter appeal, within a hierarchical system of courts, in which lawyers can debate points of law and the judiciary will opine on their view of correct interpretation.[9] The doctor does not have this luxury of delay as an illness will not respect the suggestion of an adjournment. Within the law, a junior barrister may approach a senior barrister for advice, but the adversarial system dictates that the opposing counsel will be equally equipped to argue against such advice if it does not agree with their position.

The idea of an adversarial system is counter intuitive for the proper delivery of medicine as all parties should be on the same side when it comes to fighting disease. The objective of all the doctors who are involved in a given case is to offer the patient optimal care with all the doctors having a common purpose – the antithesis of the adversarial system that prevails within the common-law jurisdiction.

These concepts indicate that the doctor operates under a different set of understandings than those that apply to the lawyer. The doctor gives instruction to the patient, advises the patient regarding the correct way to proceed to fight a disease and expects the patient to comply with these instructions. Should the patient refuse to accept such advice the doctor will, more likely than not, suggest that the patient seek medical management from another doctor. Within law, it is the lawyer who takes instruction from his/her client and the objective of the lawyer is to satisfy the stated objectives of the client. While the lawyer may well advise his/her client as to the best strategy to be adopted to achieve the client's desired goal, this usually entails defeating the proposition posed by opposing counsel, representing the objectives of a competing client whose goals are diametrically at odds with the aims which the first lawyer is paid to achieve. Thus medicine aims to provide the optimal outcome for everyone involved in any given case while in law there are opposing imperatives which, by definition, will only allow one party to fully succeed in achieving an optimal outcome and may well use mediation and compromise to achieve a suboptimal outcome for everyone.

From the above introduction it can be seen that there exists a significant chasm between the standard operating procedures and expectations of lawyers and doctors. For the two to operate in harmony, at the interface of medicine and law, there needs to be a clear understanding of the expectations of each other. The evolution of the Australian College of Legal Medicine (ACLM) and its contribution to the teaching of legal medicine in Australasia is described.

2. The development of the ACLM

The ACLM was the brainchild of three dually qualified doctors, namely Maurice Wallin, Noel McCleave and Maura McGill. Noel McCleave functioned as a forensic physician and continues to practice both as a doctor and lawyer, while Maurice Wallin had his focus on occupational health. Maura McGill worked principally as a health lawyer while maintaining her skills as a general practitioner. Publicity was generated through medical tabloid publications, such as the 'Australian Doctor,' inviting similarly qualified doctors to come together to discuss how best to capitalise on their significant training and experience.

The first meeting of the ACLM occurred on 11/11/95 at Goldfields House, Sydney, Australia, and was able to distil the aims of the ACLM which were to achieve the following:

- Promote study and research in the field of legal medicine.

- Establish high standards of skill on and practice in legal medicine.
- Establish a code of professional standards, advice and information for practitioners in legal medicine.
- Promote and represent legal medicine in academic, political and other forum.
- Promote the ACLM as an authoritative body regarding legal and forensic medicine and support the medical profession in the field.
- Promote relations between people engaged in the practice of legal medicine and the publication of their outstanding achievements.

Having determined the aims and objectives of the ACLM, its structure was also determined to include the following:

- The ACLM is a Public Company Limited by Guarantee.
- ACLM Council, elected at the annual general meeting which has 12 elected members, half of whom are elected 2nd yearly (2 of the 12 places have since been reserved for the Faculty of Dentistry).
- The Executive consists of a President, 2 Vice-Presidents (1 administrative and 1 academic), Secretary, Treasurer and Censor-in-Chief – all of whom are re-elected annually by the Council.

The membership of the ACLM has been established on an hierarchical basis which is determined by the level of experience and training demonstrated by those applying to join the college. These have been clearly defined and published on the college web site and include the following:

- Five divisions, namely:

  Fellows
  Members
  Associate members
  Affiliate members
  Honorary fellows

Only fellows and members have voting rights at official College activities as it is accepted that associate members are people still in training (who have not yet achieved the requisite qualifications) and affiliate members represent individuals who wish to benefit from college activities, and membership rates, but who are usually not doctors and hence cannot gain full recognition within a medical college. At the time of preparing this paper, there were only six honorary fellows of the college. These people have been given this honour because of their considerable contributions to the college. The list includes Her Excellency Professor Marie Bashir, the Governor of the Australian State of New South Wales. She has officiated at a number of college activities, including the official opening of the 15th World Conference on Medical Law, hosted by the ACLM as an affiliated organisation and on behalf of the World Association for Medical Law, in Sydney, in August 2004. Her Excellency epitomises the standards of the college, being both a professor of psychiatry and the penultimate legal representative of the State of New South Wales.

In 2000 Maurice Wallin, the founding president of the ACLM, suggested the formation of a Faculty of Dentistry within the college, a proposition which was realised in November 2000. This recognised that dentistry represented a form of oral medicine and that dual qualified dentists provided a body of expertise who could enhance the knowledge of all those in the college. The inaugural Faculty of Dentistry meeting occurred in July 2001. To ensure that the dentists retained a voice on council, two council positions were sequestrated and quarantined to be filled exclusively by dentists who belonged to the college.

In 2005 the Australian and New Zealand Forensic Medicine Society (ANZ FMS) unilaterally voted to disband and approached the ACLM to ascertain the feasibility of becoming absorbed into the college. This was presented to the college's membership and was roundly endorsed and accepted as, from its outset, the ACLM had two strands, being those of legal medicine and forensic medicine. As a direct consequence of this merger, between the ACLM and the ANZ FMS, the college also voted to adopt the Journal of Clinical Forensic Medicine as its official journal for a trial period and in return the Journal invited further representation from the college on to its international editorial board. As a further consequence of this merger, the ACLM also became an affiliate of the Australian and New Zealand Forensic Sciences Society and within this capacity was invited as an integral organisation to join in the hosting of the 18th International Symposium of Forensic Sciences, an offer which it greatly appreciated and immediately accepted.

To meet its objectives, to provide educative facilities in legal medicine, the college has also accepted an invitation to provide a forum in which to teach legal medicine to the membership of other colleges, such as the Royal Australian and New Zealand College of Obstetrics and Gynaecology. It can be seen that the college has just celebrated its decade milestone and has already developed a real presence within the domain of legal and forensic medicine. The ACLM has actively invited anyone interested in the college's activities to visit its website <www.legalmedicine.com.au> and to seek further information as may be required from time to time by contacting the college either by 'snail mail' at P.O. Box 598, Northbridge, 1560 NSW, Australia or via e-mail at <aclmadmin@legalmedicine.com.au>. It has also developed an e-Journal to complement its newsletter and its subscription to the above cited hard copy Journal to disseminate information to all those who express an interest in legal medicine.

3. Teaching programs in legal medicine

It was appreciated that many doctors were required to function as expert witnesses within the legal system and

that there were both reticence and fear of such a role.[10] In response to this recognition, the ACLM developed an Expert Witness Program (EWP) designed to meet this need with the first pilot program being undertaken in Melbourne in November 2000. The EWP has evolved over time and now adopts a successful model that is made available to anyone who wishes to enrol in the course although, if restricted numbers are exceeded, preference is given to college members.

The syllabus for the EWP requires participants to submit legal medicine reports, taken from within the applicant's area of expertise, which are critically appraised, marked and returned to the participant on the day of the proceedings. Lectures are provided by a solicitor, a barrister and a judge to inform the participants of what each branch of the legal system expects from expert witnesses. A further lecture is provided by an experienced expert witness to indicate how that expert fulfils his/her perceived role as an expert. Following these didactic lectures there is a moot undertaken within a real court room in which a real judge presides, real barristers either lead and/or cross-examine the witness and the witness is selected from among the participants in the EWP. The selection of witness is based on a choice of reports that were provided by the candidates and is chosen to best demonstrate the necessary characteristics required to perform adequately within the courtroom.

Because of time constraints, not all participants in the EWP are given the opportunity to be in the witness stand but all candidates are part of the moot in that they constructively criticise the performances of their colleagues. Active involvement in all phases of the EWP is greatly encouraged and the ACLM has undertaken a feedback programme to upgrade and enhance its delivery of training within these courses.

Acknowledging the differences that exist between medicine and law, the ACLM has also created teaching programs specifically directed at the needs of doctors to better understand the law. The first of these was the **Basic Law Intensive** (BLI), which was undertaken in Sydney in 2001. It has been refined to provide a two-day program which is made available to anyone who wants a basic introduction to the understanding of the Australian legal system as perceived by doctors with legal training. Its aim is not to turn doctors into lawyers but rather to introduce doctors to legal thinking and legal process and to help them understand how the law operates. Applicants may enrol in either the one-day EWP course which precedes the BLI programme, the two-day BLI course or to undertake both courses which are conducted consecutively in conjunction with each other.

The syllabus for the BLI includes an overview of the history of the development of the Australian common law system, designed to assist doctors to understand how the system evolved. Other topics which are covered within the curriculum of the BLI are torts law; criminal law; constitutional law; the law of evidence; administrative law; interpretation of acts; contract law; and legal research method.

Through this process the lecturers aim to allow the participants to appreciate how the legal system operates and, through that understanding, to better comprehend their role as doctors, or other medical or allied health professionals, within a society in which all behaviour is ultimately regulated by the law.

To realise its national and regional commitment to teach legal medicine, the ACLM has offered its courses, both the EWP and BLI, in every State in Australia and this year, 2006, for the first time, is preparing to offer both the EWP and BLI courses in New Zealand where there are now a number of ACLM fellows. As a further development in the provision of courses provided by the ACLM, 2006 has been set aside to offer the first Advanced Legal Intensive (ALI) programme which will offer more detailed instruction in legal topics designed to capitalise on the foundations that were provided within the BLI. There has been a continuing thirst for knowledge amongst the constituents of the ACLM and ALI has been developed to respond to this request for further training. It is hoped that this too will become a moving feast which will travel around the country.

In addition to these courses in legal medicine, the ACLM has also established Annual Scientific Meetings (ASM), held in various major cities around Australia, to allow its constituents to share ideas and exchange experiences. These courses have examined specific topics of interest and aim to remain topical with issues of importance which affect our society. As has already been stated, the ACLM also recognises that it has two strands, namely those of legal and forensic medicine, and regularly holds scientific meetings in forensic medicine, such as those held annually at the New South Wales Police Centre, in conjunction with the Australasia College of Biomedical Scientists.

4. The master of legal medicine

From its inception, the ACLM has had a desire to create formal academic recognition of legal medicine as a discipline within medical education, particularly at university level. The college wanted to create an unequivocal position that clearly differentiated between health/medical law and legal medicine which recognised that the approach adopted by doctors, and other health professionals, was quite different to that adopted by those within the legal profession.

After negotiations with a number of universities, the ACLM was successful in creating a partnership with the School of Medicine, at Griffith University, in Queensland. This resulted in the establishment of the first master degree in legal medicine to be offered in Australia, from within a medical, rather than a legal, faculty. Both Griffith University and the ACLM are very proud of this partnership which recognises that doctors have as much claim to legal medicine as lawyers have to medical/health law. It is only

with the foresight of such people, as Professor Judy Searle, the inaugural dean of the School of Medicine, at Griffith University, that legal medicine will have the opportunity to establish itself as a viable academic discipline within the broader realms of medical education.

The course was specifically designed to meet the needs of busy doctors without causing undue interference with the conduct of their clinical practices. The first students were enrolled in 2005, at the time of the decade celebrations of the ACLM. To mark the occasion, the School of Medicine invited the college to hold its academic Annual Scientific Meeting (ASM) at the University and the inaugural students attended the ASM as guests of the college. The calibre of students has been exemplary, which bodes well for both the future of the course and that of the partners who created it. The curriculum is constantly being evaluated and modified to meet the needs of its market including greater on-line delivery where appropriate.

5. Conclusions

There exist definite differences between doctors and lawyers with regards to their approaches to either medical/health law or legal medicine. The role of the doctor appears to be more widely encompassing than is the case for the lawyer. Doctors are expected to achieve the optimal outcome for all concerned and to provide instructions to patients when prescribing the necessary remedy to treat a given illness. Conversely lawyers take instructions from their clients and represent only one side of any given case in which it is the system which must reach the appropriate solution and find the correct remedy. Within medicine there is usually a single optimal solution to the situation while in law the solution is usually based on an evaluation of opposing views within common-law jurisdictions.

The ACLM was founded in 1995 and since that time has created a number of unique courses, including the EWP, BLI, ASMs and specialised courses in forensic medicine. In addition to these programs, it has also entered into a partnership with Griffith University and has fostered the first Australian Master of Legal Medicine degree course to be taught within a medical, rather than a legal, faculty at university. This is seen as a major achievement in the recognition of legal medicine as an educative discipline within medicine with the creation of a partnership between a specialised medical College and a University.

The ACLM has acknowledged its role as a teacher of, and peak body within, legal medicine in Australasia and has offered its services to other medical Colleges. It continues to develop new and innovative programs, such as the ALI, and to expand the scope of its teaching to include courses which go beyond the confines of Australia, with courses to be conducted in New Zealand as the first of the offshore programs.

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